

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SERGEY SPITSYN,

Plaintiff,

v.

RICHARD MORGAN, *et al*,

Defendants.

Case No. C04-5134FDB-KLS

ORDER REGARDING
PLAINTIFF'S MOTION FOR AN
ORDER TO COMPEL
DISCOVERY

This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1), Local Magistrates Rules MJR 3 and 4, and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72. The case is before the Court on plaintiff's filing of a motion for an order to compel discovery. (Dkt. #162). After reviewing plaintiff's motion, defendants' response to that motion, plaintiff's reply thereto, and the balance of the record, the Court finds and orders as follows:

(1)¹ Defendants' Full Names

Plaintiff seeks the full names of all defendants, including their middle names, claiming that certain documents produced might refer to a defendant by only their first name or by their initials. This, plaintiff asserts, could prevent him from differentiating the named defendants from other persons having similar names. Defendants respond by stating that plaintiff already has the first and last names of each defendant,

¹The section numbers used herein correspond with the paragraph numbers contained in plaintiff's motion.

1 and that he has not articulated any reason for why the middle names are needed as well. Plaintiff replies
2 by stating that defendants have presented no reason for not disclosing the middle names or why disclosing
3 them is irrelevant to discovery.

4 Contrary to defendants assertion, as noted above, plaintiff did provide a reason for seeking each of
5 their middle names. The Court, however, finds that reason to be without merit. Although the possibility
6 does exist, however slight, that one or more of the named defendants has a name, which so similar to
7 another individual's name appearing in the discovery documents provided, that in the right context could
8 lead to some identity confusion, plaintiff has not made any showing that such has happened already or is
9 likely to happen. Accordingly, because plaintiff does not dispute that he has the first and last names of
10 each defendant, which, barring the kind of showing discussed above, should be sufficient for purposes of
11 discovery, his request for defendants' full names hereby is DENIED.

12 (2) Position Descriptions

13 Plaintiff claims defendants failed to provide the descriptions of their official positions signed by
14 each of them that he requested. By signing those position descriptions, plaintiff asserts, each defendant
15 agreed to perform the occupational duties set forth therein. Defendants respond by asserting that they
16 produced 76 pages of responsive documentation, including copies of position descriptions for all of them.
17 Plaintiff replies that those position descriptions were not produced, and that the ones that were provided
18 contain descriptions for other individuals not parties to this lawsuit.

19 The Court first notes, however, that in his first request for production of documents, of which the
20 motion to compel is concerned, plaintiff did not ask for the actual position descriptions signed by each
21 named defendant. Rather, he merely requested the "[o]ccupational duties and responsibilities of each
22 defendant." See Defendants' Response to Plaintiff's Motion to Compel Discovery ("Response"), Exhibit
23 1, Attachment A, p. 1. As such, defendants response cannot be said to have been unresponsive for not
24 having provided copies of those particular descriptions.

25 That being said, plaintiff has attached to his reply brief what he claims are copies of the position
26 descriptions that defendants did produce. A review of those copies and of the position titles set forth by
27 plaintiff in his motion, however, shows defendants' response appears to be deficient only with respect to
28 the position description of one of the named defendants, William Bernay. Whereas, according to plaintiff,
it seems defendant Bernay is a Corrections Officer Level 1, defendants produced a position description

1 for the position of "Corrections Officer 2." As to all of the other named defendants, the position
2 descriptions produced by defendants appear to match the job titles listed by plaintiff.

3 Plaintiff's request, therefore, hereby is GRANTED to the extent that defendants shall produce by
4 the date set forth below, a description of the position of a level 1 corrections officer. In all other respects,
5 however, plaintiff's request hereby is DENIED for the reasons set forth above.

6 (3), (4) Grievances and Civil Actions Filed Against Defendants

7 Plaintiff seeks summaries of the nature of all grievances filed by other inmates and prison officials
8 and all civil actions filed by other inmates against defendants. Plaintiff argues these summaries may lead
9 to discovery of new potential witnesses and/or evidence of the habitual or routine practices of defendants,
10 such as with respect to retaliations made toward other litigating inmates. Plaintiff further asserts they
11 may lead to discovery of evidence that defendants are aware of laws and policies, and therefore do not
12 qualify for immunity.

13 Defendants objected to plaintiff's original request to produce these summaries, and object now to
14 doing so, on the basis that the request is extremely overbroad and that plaintiff has not demonstrated how
15 producing them is reasonably calculated to lead to the discovery of admissible evidence. Plaintiff replies
16 that defendants themselves have failed to show how the requested summaries are irrelevant or unlikely to
17 lead to the discovery of admissible evidence.

18 The Court, however, agrees with defendants that plaintiff has not shown the requested summaries
19 are reasonably calculated to lead to the discovery of admissible evidence. A party "may obtain discovery
20 regarding any matter, not privileged, that is relevant to the claim or defense of any party." Fed. R. of Civ.
21 P. 26(b)(1). "Relevant information," furthermore, "need not be admissible at trial if the discovery appears
22 reasonably calculated to lead to the discovery of admissible evidence." Id.

23 Here, plaintiff has not demonstrated such summaries are likely to result in any evidence relevant
24 to the particular constitutional claims raised in his second amended complaint. That is, there is no
25 indication that summaries of grievances or lawsuits filed by other inmates or staff members concerning
26 other matters not the subject of this lawsuit will shed any light on the actions of defendants plaintiff
27 alleges resulted in the violation of his constitutional rights. Nor would plaintiff's request necessarily have
28 been viewed by the Court as being more reasonable, had plaintiff alleged that defendants' actions were
part of a policy or pattern of unconstitutional conduct against prison inmates in general.

1 As such, plaintiff's request appears to be little more than a fishing expedition, premised largely on
2 the vague hope that he will be able to come up with additional evidence to bolster his case. Accordingly,
3 plaintiff's request for summaries of grievances and lawsuits against defendants filed by other inmates and
4 prison officials hereby is DENIED.

5 (5) History and Records of White Supremacist and Security Threat Group Activity

6 Plaintiff requests defendants be ordered to produce the ““extensive institutional history of white
7 supremacist [sic] activity,”” referred to in an August 6, 2001 “Administrative Segregation Referral,” and
8 records showing him to be “affiliated with the woodpile & stg [security threat] group” referred to in an
9 “Initial Serious Infraction Report, dated 5-30-02.” See Plaintiff's Motion for an Order to Compel
10 Discovery (“Motion”), p. 3; Response, Exhibit 1, Attachment A, p. 2. Plaintiff asserts these quotes were
11 used as fabrications to retaliate against him by placing him in solitary confinement for filing this civil
12 action.

13 Defendants state that they produced 61 pages of documents in response to plaintiff's discovery
14 request, that other inmates' names and Department of Corrections (“DOC”) numbers were redacted “in
15 order to protect the identities of other individuals who may have provided information to DOC staff and
16 due to safety and security issues,” and that such redactions were justified. See Response, p. 3. Plaintiff
17 replies that defendants did not produce the specifically requested discovery, and that the issues of security
18 and safety raised by defendants are insufficient to defeat his request.

19 The Court agrees defendants' response was insufficient. Defendants do not specifically dispute
20 that they did not produce the particular discovery requested by plaintiff. Defendants did object in their
21 response to plaintiff's initial request for production in part on the basis that the request was overly broad
22 and not reasonably calculated to lead to admissible evidence. However, plaintiff does claim in his second
23 amended complaint that defendants retaliated against him for filing this lawsuit. Thus, it appears here that
24 the request bears at least some relevance to plaintiff's retaliation claim.

25 The Court further finds insufficient defendants' reliance on the issue of safety and security. They
26 make no showing that this was the reason for which they failed to produce the particular discovery being
27 requested. Indeed, as just discussed, defendants do not specifically address plaintiff's claim that they did
28 not produce that discovery. Even if this was the basis for not producing it, however, defendants have not
given any reason why the mere appearance of other inmate names and DOC numbers in documentation

1 produced in discovery presents safety or security concerns. That is, without the proper context the Court
2 is unable to determine whether those concerns are valid.

3 Defendants do further assert that inmate names and DOC numbers were redacted for the additional
4 purpose of protecting individuals who may have provided confidential information to DOC staff. There is
5 no claim here, however, that such individuals actually provided confidential information to DOC staff and
6 so require protection. In addition, no showing has been made that the mere possibility that confidential
7 information was provided raises in this context a sufficient safety or security issue. For example, there is
8 no indication that the simple presence of the names and DOC numbers of these individuals in itself would
9 indicate they may have provided such information to prison authorities.

10 The Court, however, will not grant plaintiff's request for production at this time. Rather, the
11 Court hereby orders defendants to file by the date set forth below a response, explaining, with adequate
12 support, why plaintiff should be prevented from receiving all of the requested discovery, including the
13 names and DOC numbers of other inmates contained therein, due to issues of safety and security.

14 (6) Confidential Information Regarding November 17, 2004 Segregation

15 Plaintiff seeks certain confidential information regarding his placement in "punitive segregation"
16 on November 17, 2004. Motion, p. 3. He claims such confidential information will show that his being
17 placed in segregation was unwarranted, and that it was used solely for the purpose of disrupting this civil
18 action and retaliating against him.

19 In response, defendants state that they provided 53 pages of documents, withholding only one
20 two-page document "due to safety and security concerns according to RCW 42.56.240(2)," which they
21 claim was appropriate. Response, p. 4. Defendants further state that they redacted information provided
22 by a confidential informant contained on two other pages due to "safety and security concerns," and,
23 again, the names and DOC numbers of other inmates from several other pages due to "safety and security
24 issues." Id. Such redactions, defendants assert, were appropriate as well.

25 First, with respect to RCW 42.56.240(2), the Court finds defendants reliance on that state statutory
26 provision to be misplaced. RCW 42.56.240(2) merely provides that "investigative, law enforcement, and
27 crime victim information," which reveals "the identity of persons who are witnesses to or victims of
28 crime or who file complaints with investigative, law enforcement, or penology agencies," is "exempt from
public inspection and copying," if such "disclosure would endanger any person's life, physical safety, or

1 property.” Clearly, this language, which is part of Washington’s Public Records Act (see RCW Chapter
2 42.56), applies only to public inspection and copying, not discovery in federal court. As such, defendants
3 fail to establish its relevancy here.

4 The Court, in addition, already has addressed the inadequacy of defendants’ reliance on general
5 “safety and security” concerns to support their decision to redact the names and DOC numbers of other
6 inmates, without explaining why, given the particular context in which they appear, such redaction is
7 necessary. The situation, however, is more complicated concerning defendants’ redaction of information
8 they claim to have been provided by a confidential informant from the four pages noted above due to
9 safety and security issues. While, again, the Court deems the use of such general “safety and security”
10 language without more to be an insufficient basis for opposing discovery requests, it does recognize that
11 the release of such information may implicate real security concerns.

12 Based on defendants’ response to plaintiff’s motion, however, the Court at this time is unable to
13 ascertain the propriety of plaintiff’s request and of defendants’ objections. As above, the Court therefore
14 hereby orders defendants to file by the date set forth below a response, explaining, with adequate support,
15 why plaintiff should be prevented from receiving the redacted names and DOC numbers of other inmates
16 due to issues of safety and security. With respect to the confidential informant information, defendants
17 shall file with the Court for *in camera* review as *ex parte* documents, unredacted copies of that
18 information, accompanied by an adequately supported explanation of the specific safety and security
19 issues implicated by disclosure thereof, so the Court can make a proper determination.

20 Because the Court hereby is ordering that the documents containing the confidential information
21 and accompanying explanation be filed so as to be viewable only by the Court and defendants and their
22 counsel, **when electronically filing with the Court, defendants should take care to file the documents**
23 **and explanation as *ex parte* sealed documents.** For any questions related to electronic filing,
24 defendants should contact the CM/ECF help desk at (206) 370-8440 or (866) 323-9293.

25 (7) Documents Regarding January 1, 2005 Incident

26 Plaintiff claims defendants withheld three documents, again relying on RCW 42.56.240(2) to do
27 so, without explaining how that statutory provision is applicable. For the reasons set forth above, as to
28 this specific basis for producing the requested documents, the Court agrees. Defendants state in response
that they produced 72 pages of documents, withholding only three photographs of other injured inmates,

1 also due, once more, to “safety and security” concerns. This too, again for the reasons set forth above, is
2 an insufficiently asserted basis for opposing plaintiff’s motion on this issue. Accordingly, defendants also
3 hereby are ordered to file by the date set forth below a response, explaining, with adequate support, why
4 plaintiff should not receive the photographs due to issues of safety and security.

5 Plaintiff further claims defendants did not provide inmate witness statements concerning the above
6 incident. Defendants, on the other hand, state they supplemented their original discovery responses with
7 “copies of the entire infraction packet” concerning the January 1, 2005 incident, which included inmate
8 witness statements. Response, p. 4. Plaintiff has not establish that the witness statements defendants did
9 provide were not all of such statements that they had. Accordingly, this particular request for production
10 hereby is DENIED.

11 Plaintiff seeks as well copies of grievances filed by an inmate whom plaintiff has designated by a
12 specific DOC number, and whom he states was involved in the January 1, 2005 incident. Defendants
13 state that this is a new request, which they argue is objectionable on the basis that it is not reasonably
14 calculated to lead to the discovery of admissible evidence. Defendants further argue that inmates are
15 prohibited from possessing information about other inmates, as it may threaten the safety and security of
16 DOC staff and/or other inmates.

17 The Court disagrees that plaintiff’s request here is necessarily new, as he asked in his first request
18 for production of documents for “[a]ll documents regarding the January 1st of 2005 incident.” Response,
19 Exhibit 1, Attachment A, p. 3. To the extent that any grievances regarding this incident by the inmate to
20 whom plaintiff refers exist, therefore, they should be considered among those documents. Further, while
21 it may be that inmates are prohibited from possessing information about other inmates, defendants have
22 not provided a copy of any such DOC policy or regulation.

23 In addition, it is not clear that any such grievances would contain information concerning the other
24 inmate, as opposed to the January 1, 2005 incident with respect to which the grievances allegedly
25 concern, that is objectionable on safety and security grounds. Defendants simply have not made that
26 showing. Nor have they explained why possession of information, of whatever kind, about other inmates
27 presents safety and security concerns, let alone what those concerns are. Accordingly, the Court hereby
28 orders defendants to file by the date set forth below a response, explaining, with adequate support, why
plaintiff should not receive copies of these grievances due to issues of safety and security.

1 Lastly, plaintiff claims defendants failed to produce “documentation of grievance file # 0500762,
2 which was filed regarding the 01/01/05 incident.” Motion, p. 4. Again, to the extent that grievance exists,
3 it should be considered to be included among the documents plaintiff originally requested concerning the
4 January 1, 2005 incident. Accordingly, plaintiff’s request for this particular requested document hereby is
5 GRANTED. Defendants shall produce the above-noted documentation, to the extent that it exists and that
6 it has not previously been provided.

7 (8), (9) Documents and Camera Recordings Regarding February 28, 2005 Incident

8 Plaintiff requests all documents and camera recordings concerning a February 28, 2005 “incident.”
9 Defendants respond that after initially seeking clarification from plaintiff regarding what he meant by use
10 of the term “incident,” they both produced a one-page grievance and objected on the basis that the request
11 was not reasonably calculated to lead to the discovery of admissible evidence. In his reply, plaintiff states
12 defendants did not provide defendant Sheldon Weaver’s February 28, 2005 incident report, and still have
13 not provided the requested camera recordings.

14 It is not clear from defendants’ response whether the grievance they produced concerns the actual
15 February 28, 2005 incident to which plaintiff refers. Nor is it exactly clear what that incident concerned
16 and what relation it has to the claims contained in plaintiff’s second amended complaint. Indeed, there is
17 no mention of that incident anywhere in that complaint. On this basis, therefore, the Court is inclined to
18 agree with defendants that plaintiff’s request with respect to both documentation and camera recordings is
19 not reasonably calculated to lead to the discovery of admissible evidence.

20 Nevertheless, defendants did produce at least one document to which they apparently felt plaintiff
21 was entitled, and thus, by implication, to which they apparently felt was at least somewhat likely to lead
22 to the discovery of admissible evidence. Defendants, however, have not explained why they feel
23 plaintiff’s requests for other documentation and camera recordings concerning the February 28, 2005
24 incident are not reasonably likely to lead to the discovery of admissible evidence.

25 Accordingly, the Court hereby orders defendants to produce any such other documents and camera
26 recordings to the extent they exist, or file a response explaining, with adequate support, why they should
27 not be made to do so by the date set forth below.

28 (10) Documents Regarding Mail Issue

Plaintiff requests that defendants produce “[a]ll documents regarding the mail issue,” including

1 specifically defendant Steve Fleenor's "tracking log" of certain mail rejection appeals. Motion, p. 5. In
2 response, defendants state that they "produced 217 pages of documentation responsive" to plaintiff's
3 request, and that they "provided all responsive documents in their possession." Response, p. 6. This last
4 statement is disputed by plaintiff. However, plaintiff presents no evidence that defendants have failed to
5 produce all responsive documents they have in their possession. Accordingly, this particular discovery
6 request hereby is DENIED.

7 (11) Documents Regarding Infraction #714

8 Plaintiff requests that defendants produce "[a]ll documents regarding the infraction #714, signed
9 on 07/10/06." Motion, p. 5. In particular, he accuses them of withholding "documents of communication"
10 between Lori Scamahorn – who is the wife of Al Scamahorn and who is not a party to this lawsuit – and
11 defendant Fleenor, which he claims constitute evidence of retaliatory intent. In response, defendants state
12 that they "produced 10 pages of documentation responsive" to plaintiff's request, and that they "provided
13 all responsive documents in their possession." Response, p. 6. Not surprisingly, again this last statement
14 is disputed by plaintiff. As with his prior request, however, plaintiff presents no evidence that defendants
15 have failed to produce all relevant documents in their possession. Accordingly, this particular discovery
16 request hereby is DENIED as well.

17 (12) Redacted Inmate Names and DOC Numbers

18 Plaintiff here challenges the redaction of other inmate names and DOC numbers by defendants, on
19 the basis that inmate names and numbers are not confidential and that such redaction prevents him from
20 discovering potential witnesses. As discussed above with respect to the individual discovery requests, the
21 Court found defendants' stated reasons for redacting the names and DOC numbers of other inmates to be
22 insufficient. The Court also recognized, however, that there very well may be significant and valid safety
23 and security issues involved in producing such information. The Court, therefore, ordered defendants to
24 respond to this order by providing a more adequate explanation of those issues. Accordingly, this request
25 hereby is DENIED as being redundant.

26 Based on the foregoing discussion, defendants shall file by **no later than September 10, 2007**, a
27 response addressing the specific issues noted above. Plaintiff shall file any reply thereto by **no later than**
28 **September 13, 2007**. Plaintiff's motion for an order to compel discovery (Dkt. #162) shall be re-noted
for consideration on **September 14, 2007**, to address those remaining discovery requests contained in that

1 motion that have not been specifically denied or granted in this order.

2 The Clerk is directed to send a copy of this Order to plaintiff and counsel for defendants.

3 DATED this 10th day of August, 2007.

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7 Karen L. Strombom
8 United States Magistrate Judge
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